



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/086,821	05/29/1998	MARCO LARA	ATV-004	8789

21323 7590 12/04/2002

TESTA, HURWITZ & THIBEAULT, LLP
HIGH STREET TOWER
125 HIGH STREET
BOSTON, MA 02110

EXAMINER

SALAD, ABDULLAHI ELM

ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/086,821	LARA ET AL.	
	Examiner	Art Unit	
	Salad E Abdullahi	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 September 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,6-16,20 and 25-33 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 26-33 is/are allowed.

6) Claim(s) 1,6-16 and 20 is/are rejected.

7) Claim(s) 25 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

6) Other: _____.

Art Unit: 2153

Response

1. The Amendment filed on 09/16/2002 has been entered and made of record.
2. Applicant's arguments with respect to claims 1, 6-16 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

3. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 26-33 are allowed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 6-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarvey U.S. Patent No. 5,777,989.

As per claim 1, 15 and 20, McGarvey, discloses a system for distributing client requests among two or more servers, comprising:

Art Unit: 2153

monitoring the servers to determine if a predetermined condition (if server has failed or if a server is unsuccessful to respond to a query) (see col. 4, line 64 to col. 5, line 38).

if the predetermined condition does exist at least one of the servers, redirecting by that server at least one client request from that server to another one of the servers (that is if designated server is unable to serve the client request, the designated server refers the client to another one of the server which is available to server the client request, by returning to the client an IP address of a server which would serve the request))(see col. 1, lines 40-49).

McGarvey, does not explicitly disclose utilizing web servers.

Nonetheless, the utilization of web servers would have been obvious if it is not inherent to McGarvey's system. Furthermore, McGarvey's system utilizes Domain name servers serving client request. Domain name servers are known to be part of web server systems which serve browser or client requests(see fig. 1) Therefore, given the teachings of McGarvey, it would have been obvious to one having ordinary skill in the art to utilize web servers, because web servers are readily accepted in the industry.

In considering claims 6-8, 14, Although, McGarvey disclose substantial features of the claimed invention including the step of monitoring server load, McGarvey, is silent the load metric include:

Art Unit: 2153

CPU utilization, memory utilization, request queue delay, and queue request length.

However, monitoring predetermined network traffic parameters to evaluate the health of a network is well known in the art. As known, in the art threshold parameters including CPU utilization, memory utilization, request queue delay, and queue request length are set, when one or more of these parameters are equaled or exceed the system causes the redirection of requests to the other web servers. Therefore, it would have been obvious to one having ordinary skill in the art to modify McGarvey, by employing threshold parameter indicative current load of a web server in order to provide monitoring, redirection and dynamic overload protection.

In considering claims 9-11 and 16. McGarvey is silent, wherein the redirecting step comprising only if the request is for one of predetermined set of contents. However, it would have been obvious to having ordinary skill in the art at the time of invention to include the McGarvey's system step of redirecting if the request is for one of predetermined set of contents, such that client requests can be readily redirected to the best fit server for the request, thereby enhancing the system load distribution.

In considering claims 12 and 13, McGarvey, does not disclose the step of redirecting if the client request is for a content that does not have state i.e. redirection is allowed. However, it would have been obvious to having ordinary skill in the art at the time of invention to include the McGarvey's system step of determining if redirection of a requested content is to be allowed or

Art Unit: 2153

if it is only to be served by the current server, in order to avoid redirecting a content that is designated to be served by the current server.

CONCLUSION

6. The prior art made of record and relied upon is considered pertinent to the applicant's disclosure.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Abdullahi E. Salad** whose telephone number is **(703) 308-8441**. The examiner can normally be reached on **Monday to Friday from 8:30AM to 5:00PM**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Glen Burgess**, can be reached at **(703)305-4792**. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is **(703)305-3900**.

Any response to this action should mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, DC 20231

or faxed to:

(703) 746-7238, (after final communications)

(703) 746-7239, (Official communications)

(703) 746-7240, (Non-Official/Draft).

AS

11/27/02



GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100